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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

David Allen Harbour,

Defendant.

No. CR-19-00898-001-PHX-DLR

**UNITED STATES' RESPONSE TO  
DEFENDANT'S EMERGENCY  
MOTION TO RELEASE DEFENDANT  
TO PREPARE FOR SENTENCING  
(DOC. 719)**

Defendant's emergency motion to be released for his sentencing and forfeiture hearing should be denied. First, Defendant has provided no new facts that were not already known to and considered by this Court when it denied Defendant's previous motion for post-conviction release. Def.'s Mot. to Continue Release on Bail Until Sentencing, Doc. 693. Second, Defendant never raised in that prior (26-page) motion a need to be out of custody to prepare for his sentencing hearing. His motion for reconsideration of his release status should be rejected on this basis alone.

As this Court knows, Defendant was released from custody prior to trial over the government's objection to assist his counsel during a lengthy (five-week) trial. Order re Gov't Mot to Detain Def., Doc. 691. Prior to trial, Defendant was presumed innocent. He has now been convicted of 18 counts of the Second Superseding Indictment (SSI). He has

1 also pleaded guilty to tax evasion, and the remaining counts will be dismissed only at the  
2 time of sentencing. There is therefore a statutory presumption that he should be detained  
3 pending sentencing. 18 U.S.C. 1343; *see also* Doc. 674.

4 More importantly, Defendant has always been and remains a serious flight risk and  
5 an economic danger to the community. After he was released from custody following his  
6 arrest in August 2019, Defendant proceeded to violate numerous terms of his release,  
7 including committing another federal offense. Defendant's risk of flight and economic  
8 danger have only increased since then. First, he was found guilty by a jury of 17 counts of  
9 wire fraud and money laundering stemming from a 15-year fraudulent scheme that caused  
10 million dollars of losses his victims. Second, he pleaded guilty to tax evasion involving  
11 \$4.6 million and involving a different victim (U.S. taxpayers). Third, both the Magistrate  
12 judge and grand jury found probable cause to believe that Defendant committed money  
13 laundering, bank fraud and aggravated identity theft (Counts 25-34) stemming from  
14 Defendant's mortgage fraud scam. Order granting in part and denying in part Gov't Pet. to  
15 Revoke Pretrial Release, Doc. 346; SSI, Doc. 387. While these counts are expected to be  
16 dismissed at sentencing, the related loss is relevant conduct for his sentencing. U.S.S.G.  
17 §1B1.3.

18 Defendant's trial was also replete with evidence that he is an economic danger to  
19 whomever has the misfortune to enter his orbit. *See* Gov't Mot. to Detain Def. Post Guilty  
20 Verdict, Doc. 674. Defendant forged others' signatures, created fictitious email addresses,  
21 tampered with witnesses, hijacked a vulnerable victim's (Kenneth Bobrow) cell phone to  
22 tamper with another witness (Turasky), attempted to pay off Burg in exchange for not  
23 testifying, and spent unreservedly of other people's money (Gray, the Hills, Cathey, Burg,  
24 and many more). Gov't Mot. to Detain Def. Post Guilty Verdict, Doc 674. An economic  
25 danger is a danger to the community. *United States v. Reynolds*, 956 F.2d 192, 192 (9th  
26 Cir. 1992) ("We agree with the district court that Reynolds has failed to show by clear and  
27 convincing evidence that he does not constitute an economic danger to the community. We  
28 further hold that danger may, at least in some cases, encompass pecuniary or economic

1 harm.”); *see also United States v. Provenzano*, 605 F.2d 85, 95 (3rd Cir. 1979) (danger is  
2 not limited to physical harm; the concept includes the opportunity to exercise a substantial  
3 and corrupting influence).

4 Defendant’s risk of flight and economic danger to the community have increased  
5 exponentially now that he faces a lengthy prison term. The PSR calculates his applicable  
6 Guideline range as life and recommends a 20-year sentence. PSR para. 62. The United  
7 States intends to recommend a sentence of 22 years, which includes a consecutive sentence  
8 for the separate crime of tax evasion. Such a lengthy prison sentence provides an incentive  
9 for Defendant to flee and to defraud others in a desperate attempt to avoid a nearly-life  
10 sentence. *United States v. Zinnel*, No. 2:11-cr-00234-TLN (E.D. Cal. May. 11, 2021)  
11 (“[N]ow that the reality of conviction is undeniable to him, [Defendant is] going to start  
12 moving around money . . . [and] needs to be in custody, recorded, so that [doing so] is  
13 much harder.”). Defendant has provided no new evidence to demonstrate that he is no  
14 longer an economic danger to the community.

15 Defendant’s argument that he needs to be released from custody so that he can  
16 prepare to address the court is meritless. Defendant presents no exceptional circumstances  
17 that distinguish him from other all the other federal criminal defendants who are remanded  
18 after a guilty verdict and who prepare for sentencing while in custody. He has had over  
19 three months and the assistance of two attorneys to prepare to address the court. He has  
20 provided no new evidence to demonstrate that he is no longer a flight risk and an economic  
21 danger to the community.<sup>1</sup>

22 Defendant’s professed need to be released for the forfeiture hearing is equally  
23 unconvincing. Forfeiture was largely established at trial through the testimony of FBI  
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25  
26 <sup>1</sup> The government also notes that Defendant’s family members are also not  
27 appropriate third-party custodians. Rather than encouraging him to live a law-abiding life,  
28 his family members enthusiastically reaped the benefits of his fraud. Defendant also  
violated many pretrial release conditions, including committing a new federal crime, while  
living with and associating with these family members.

1 Forensic Accountant Jeanette Paige. The jury clearly rejected the flimsy and confusing  
 2 testimony of Cathie Cameron (and of Dr. Manning, for that matter). Therefore, at this  
 3 hearing, the Court need only decide, by a preponderance of the evidence, whether the assets  
 4 that Defendant purchased during his 15-year fraudulent scheme were purchased with funds  
 5 obtained by fraud. Defendant has not explained what evidence, if any, he intends to present  
 6 that would somehow require him to be out of custody.

7 Last and importantly, the defendant's numerous victims of his protracted fraud  
 8 schemes strongly oppose his release. *See* Victim Impact Statements. Defendant Harbour  
 9 should remain in custody. He has failed to articulate any changed or exceptional  
 10 circumstances that would require to Court to revisit his prior post-conviction motion for  
 11 release. He has also again failed to demonstrate by clear and convincing evidence that he  
 12 is not a flight risk and not a serious economic danger to the community. The Court should  
 13 again deny Defendant's motion for release.

14 Respectfully submitted this 26th day of May, 2023.

15 GARY M. RESTAINO  
 16 United States Attorney  
 District of Arizona

17 *s/ Kevin M. Rapp*  
 18 KEVIN M. RAPP  
 19 COLEEN P. SCHOCH  
 Assistant U.S. Attorneys

## 21 CERTIFICATE OF SERVICE

22 I hereby certify that on this same date, I electronically transmitted the attached  
 23 document to the Clerk's Office using the CM/ECF System for filing a copy to the following  
 24 CM/ECF registrants:

25 Stephen M. Dichter  
 26 Justin R. Vanderveer  
*Attorneys for Defendant*

27 *s/D. Parke*  
 28 U.S. Attorney's Office